

accounts, and material account activity during the period.

(7) Any amounts drawn on any credit enhancement or other support identified in Item 1114 of this Regulation AB, as applicable, and the amount of coverage remaining under any such enhancement, if known and applicable.

(8) Number and amount of pool assets at the beginning and ending of each period, and updated pool composition information, such as weighted average coupon, weighted average life, weighted average remaining term, pool factors and prepayment amounts. For asset-backed securities backed by leases where a portion of the securitized pool balance is attributable to residual values of the physical property underlying the leases, this information also would include turn-in rates and residual value realization rates.

(9) Delinquency and loss information for the period. In addition, describe any material changes to the information specified in Item 1100(b)(5) of this Regulation AB regarding the pool assets.

(10) Information on the amount, terms and general purpose of any advances made or reimbursed during the period, including the general use of funds advanced and the general source of funds for reimbursements.

(11) Any material modifications, extensions or waivers to pool asset terms, fees, penalties or payments during the distribution period or that have cumulatively become material over time.

(12) Material breaches of pool asset representations or warranties or transaction covenants.

(13) Information on ratio, coverage or other tests used for determining any early amortization, liquidation or other performance trigger and whether the trigger was met.

(14) Information regarding any new issuance of asset-backed securities backed by the same asset pool, any pool asset changes (other than in connection with a pool asset converting into cash in accordance with its terms), such as additions or removals in connection with a prefunding or revolving period and pool asset substitutions and repurchases (and purchase rates, if applicable), and cash flows available for future purchases, such as

the balances of any prefunding or revolving accounts, if applicable. Disclose any material changes in the solicitation, credit-granting, underwriting, origination, acquisition or pool selection criteria or procedures, as applicable, used to originate, acquire or select the new pool assets.

(b) During a prefunding or revolving period, or if there has been a new issuance of asset-backed securities backed by the same pool under a master trust during the fiscal year of the issuing entity, provide the information required by Items 1110, 1111 and 1112 of this Regulation AB applied taking the revised pool composition into account in the Form 10-D report (§249.312 of this chapter) for the last required distribution of the fiscal year of the issuing entity. In addition, provide such updated information in the first Form 10-D report for the period in which the prefunding or revolving period ends (if applicable). However, no disclosure need be provided by this paragraph if the information has not materially changed from that previously provided in an Exchange Act report relating to the asset-backed securities or in an effective registration statement under the Securities Act or a prospectus timely filed pursuant to §230.424 of this chapter under the same Central Index Key (CIK) code regarding a subsequent issuance of asset-backed securities backed by a pool of assets that includes the pool assets that are the subject of this paragraph.

**§ 229.1122 (Item 1122) Compliance with applicable servicing criteria.**

(a) *Reports on assessment of compliance with servicing criteria for asset-backed securities.* As required by paragraph (b) of §240.13a–18 or 240.15d–18 of this chapter, provide as an exhibit from each party participating in the servicing function a report on an assessment of compliance with the servicing criteria set forth in paragraph (d) of this section that contains the following:

(1) A statement of the party's responsibility for assessing compliance with the servicing criteria applicable to it;

(2) A statement that the party used the criteria in paragraph (d) of this section to assess compliance with the applicable servicing criteria;

(3) The party's assessment of compliance with the applicable servicing criteria as of and for the period ending the end of the fiscal year covered by the Form 10-K report (§249.310 of this chapter). This discussion must include disclosure of any material instance of noncompliance identified by the party; and

(4) A statement that a registered public accounting firm has issued an attestation report on the party's assessment of compliance with the applicable servicing criteria as of and for the period ending the end of the fiscal year covered by the Form 10-K report.

(b) *Registered public accounting firm attestation reports.* Provide the registered public accounting firm's attestation report required by paragraph (c) of §240.13a-18 or 240.15d-18 of this chapter on the party's assessment of compliance with the applicable servicing criteria as an exhibit.

(c) *Additional disclosure for the Form 10-K report.* (1) If any party's report on assessment of compliance with servicing criteria required by paragraph (a) of this section, or related registered public accounting firm attestation report required by paragraph (b) of this section, identifies any material instance of noncompliance with the servicing criteria, identify the material instance of noncompliance in the report on Form 10-K.

(2) If any party's report on assessment of compliance with servicing criteria required by paragraph (a) of this section, or related registered public accounting firm attestation report required by paragraph (b) of this section, is not included as an exhibit to the Form 10-K report, disclosure that the report is not included and an associated explanation must be provided in the report on Form 10-K.

(d) *Servicing criteria—(1) General servicing considerations.* (i) Policies and procedures are instituted to monitor any performance or other triggers and events of default in accordance with the transaction agreements.

(ii) If any material servicing activities are outsourced to third parties, policies and procedures are instituted to monitor the third party's performance and compliance with such servicing activities.

(iii) Any requirements in the transaction agreements to maintain a back-up servicer for the pool assets are maintained.

(iv) A fidelity bond and errors and omissions policy is in effect on the party participating in the servicing function throughout the reporting period in the amount of coverage required by and otherwise in accordance with the terms of the transaction agreements.

(2) *Cash collection and administration.*

(i) Payments on pool assets are deposited into the appropriate custodial bank accounts and related bank clearing accounts no more than two business days of receipt, or such other number of days specified in the transaction agreements.

(ii) Disbursements made via wire transfer on behalf of an obligor or to an investor are made only by authorized personnel.

(iii) Advances of funds or guarantees regarding collections, cash flows or distributions, and any interest or other fees charged for such advances, are made, reviewed and approved as specified in the transaction agreements.

(iv) The related accounts for the transaction, such as cash reserve accounts or accounts established as a form of overcollateralization, are separately maintained (e.g., with respect to commingling of cash) as set forth in the transaction agreements.

(v) Each custodial account is maintained at a federally insured depository institution as set forth in the transaction agreements. For purposes of this criterion, "federally insured depository institution" with respect to a foreign financial institution means a foreign financial institution that meets the requirements of §240.13k-1(b)(1) of this chapter.

(vi) Unissued checks are safeguarded so as to prevent unauthorized access.

(vii) Reconciliations are prepared on a monthly basis for all asset-backed securities related bank accounts, including custodial accounts and related bank clearing accounts. These reconciliations:

(A) Are mathematically accurate;

(B) Are prepared within 30 calendar days after the bank statement cutoff date, or such other number of days

specified in the transaction agreements;

(C) Are reviewed and approved by someone other than the person who prepared the reconciliation; and

(D) Contain explanations for reconciling items. These reconciling items are resolved within 90 calendar days of their original identification, or such other number of days specified in the transaction agreements.

(3) *Investor remittances and reporting.*

(i) Reports to investors, including those to be filed with the Commission, are maintained in accordance with the transaction agreements and applicable Commission requirements. Specifically, such reports:

(A) Are prepared in accordance with timeframes and other terms set forth in the transaction agreements;

(B) Provide information calculated in accordance with the terms specified in the transaction agreements;

(C) Are filed with the Commission as required by its rules and regulations; and

(D) Agree with investors' or the trustee's records as to the total unpaid principal balance and number of pool assets serviced by the servicer.

(ii) Amounts due to investors are allocated and remitted in accordance with timeframes, distribution priority and other terms set forth in the transaction agreements.

(iii) Disbursements made to an investor are posted within two business days to the servicer's investor records, or such other number of days specified in the transaction agreements.

(iv) Amounts remitted to investors per the investor reports agree with cancelled checks, or other form of payment, or custodial bank statements.

(4) *Pool asset administration.* (i) Collateral or security on pool assets is maintained as required by the transaction agreements or related pool asset documents.

(ii) Pool assets and related documents are safeguarded as required by the transaction agreements.

(iii) Any additions, removals or substitutions to the asset pool are made, reviewed and approved in accordance with any conditions or requirements in the transaction agreements.

(iv) Payments on pool assets, including any payoffs, made in accordance with the related pool asset documents are posted to the applicable servicer's obligor records maintained no more than two business days after receipt, or such other number of days specified in the transaction agreements, and allocated to principal, interest or other items (e.g., escrow) in accordance with the related pool asset documents.

(v) The servicer's records regarding the pool assets agree with the servicer's records with respect to an obligor's unpaid principal balance.

(vi) Changes with respect to the terms or status of an obligor's pool asset (e.g., loan modifications or re-agings) are made, reviewed and approved by authorized personnel in accordance with the transaction agreements and related pool asset documents.

(vii) Loss mitigation or recovery actions (e.g., forbearance plans, modifications and deeds in lieu of foreclosure, foreclosures and repossessions, as applicable) are initiated, conducted and concluded in accordance with the timeframes or other requirements established by the transaction agreements.

(viii) Records documenting collection efforts are maintained during the period a pool asset is delinquent in accordance with the transaction agreements. Such records are maintained on at least a monthly basis, or such other period specified in the transaction agreements, and describe the entity's activities in monitoring delinquent pool assets including, for example, phone calls, letters and payment rescheduling plans in cases where delinquency is deemed temporary (e.g., illness or unemployment).

(ix) Adjustments to interest rates or rates of return for pool assets with variable rates are computed based on the related pool asset documents.

(x) Regarding any funds held in trust for an obligor (such as escrow accounts):

(A) Such funds are analyzed, in accordance with the obligor's pool asset documents, on at least an annual basis, or such other period specified in the transaction agreements;

(B) Interest on such funds is paid, or credited, to obligors in accordance with

applicable pool asset documents and state laws; and

(C) Such funds are returned to the obligor within 30 calendar days of full repayment of the related pool asset, or such other number of days specified in the transaction agreements.

(xi) Payments made on behalf of an obligor (such as tax or insurance payments) are made on or before the related penalty or expiration dates, as indicated on the appropriate bills or notices for such payments, provided that such support has been received by the servicer at least 30 calendar days prior to these dates, or such other number of days specified in the transaction agreements.

(xii) Any late payment penalties in connection with any payment to be made on behalf of an obligor are paid from the servicer's funds and not charged to the obligor, unless the late payment was due to the obligor's error or omission.

(xiii) Disbursements made on behalf of an obligor are posted within two business days to the obligor's records maintained by the servicer, or such other number of days specified in the transaction agreements.

(xiv) Delinquencies, charge-offs and uncollectable accounts are recognized and recorded in accordance with the transaction agreements.

(xv) Any external enhancement or other support, identified in Item 1114(a)(1) through (3) or Item 1115 of this Regulation AB, is maintained as set forth in the transaction agreements.

*Instructions to Item 1122:* 1. If certain servicing criteria are not applicable to the asserting party based on the activities it performs with respect to asset-backed securities transactions taken as a whole involving such party and that are backed by the same asset type backing the class of asset-backed securities, the inapplicability of the criteria must be disclosed in that asserting party's and the related registered public accounting firm's reports.

2. If multiple parties are participating in the servicing function, a separate assessment report and attestation report must be included for each party participating in the servicing function. A party participating in the servicing function means any entity (e.g., master servicer, primary servicers, trustees) that is performing activities that address the criteria in paragraph (d) of this

section, unless such entity's activities relate only to 5% or less of the pool assets.

3. If the asset pool backing the asset-backed securities includes a pool asset representing an interest in or the right to the payments or cash flows of another asset pool and both the issuing entity for the asset-backed securities and the entity issuing the asset to be included in the issuing entity's asset pool were established under the direction of the same sponsor and depositor, see also Item 1100(d)(2) of this Regulation AB.

#### **§ 229.1123 (Item 1123) Servicer compliance statement.**

Provide as an exhibit a statement of compliance from the servicer, signed by an authorized officer of such servicer, to the effect that:

(a) A review of the servicer's activities during the reporting period and of its performance under the applicable servicing agreement has been made under such officer's supervision.

(b) To the best of such officer's knowledge, based on such review, the servicer has fulfilled all of its obligations under the agreement in all material respects throughout the reporting period or, if there has been a failure to fulfill any such obligation in any material respect, specifying each such failure known to such officer and the nature and status thereof.

*Instruction to Item 1123:* If multiple servicers are involved in servicing the pool assets, a separate servicer compliance statement is required from each servicer that meets the criteria in Item 1108(a)(2)(i) through (iii) of this Regulation AB.

### **Subpart 229.1200—Disclosure by Registrants Engaged in Oil and Gas Producing Activities**

SOURCE: 74 FR 2193, Jan. 14, 2009, unless otherwise noted.

#### **§ 229.1201 (Item 1201) General instructions to oil and gas industry-specific disclosures.**

(a) If oil and gas producing activities are material to the registrant's or its subsidiaries' business operations or financial position, the disclosure specified in this Subpart 229.1200 should be included under appropriate captions (with cross references, where applicable, to related information disclosed in